



STATE OF MAINE  
MAINE DEPARTMENT OF AGRICULTURE, FOOD & RURAL RESOURCES  
BOARD OF PESTICIDES CONTROL  
28 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0028

SETH H. BRADSTREET III  
COMMISSIONER  
HENRY S. JENNINGS.  
ACTING DIRECTOR

**BOARD OF PESTICIDES CONTROL**

**January 26, 2007**  
Colby Thomas Rooms, Hampton Inn  
425 Kennedy Memorial Drive, Waterville  
(Exit 127 from I-95)

**MINUTES**

**9:30 A.M.**

Present: Stevenson, Simonds, Jemison, Eckert, Humphreys and Qualey

1. Introductions of Board and Staff

- ☒ The Board, Staff and Assistant Attorney General Randlett introduced themselves.

2. Minutes of the December 15, 2006 Board Meeting

Presentation By: Henry Jennings  
Acting Director

Action Needed: Amend and/or approve

- ☒ Jemison/Humphrey: Moved and seconded approval of the minutes.

In favor: Unanimous

3. Approval of 2007 Blueberry Pest Management Plan for Deblois Critical Pesticide Control Area  
In March 1998, the Board adopted an amendment to Chapter 60 to protect the water supply for a state-owned fish hatchery in Deblois from pesticide drift and runoff from surrounding blueberry fields. This critical pesticide control area still encompasses all land within 1,000 feet of the hatchery and its rearing pools and the tributary water supplies to both facilities. The rule was restructured to require that pesticide applications be made according to a Board-approved pest management plan that may be updated on a regular basis without having to resort to rulemaking each time new products or technologies become available. In 2004, after three members visited the site, the Board approved a revised plan for the major landowner that only restricts specific pesticide use within a 500-foot radius of the spring pool and 250 feet from the stream. However, the plan also specifies the remaining land in the critical area will be treated according to Best Management Practices for Wild Blueberry Production. The Board has also conditioned plans for

the past three years with a requirement that Jasper Wyman & Son submit a drift management plan for the entire area.

Presentation By: Henry Jennings  
Acting Director

Action Needed: Approve/disapprove pest management plan submitted for Jasper Wyman & Son

- ☒ Jennings reported there were very few changes between the pest management plan submitted in 2006 and the current proposal. Additional low-risk insecticides have been added to the 2007 plan. He reminded members that Chapter 60 was revised a few years ago to offer the landowner, Jasper Wyman and Son, greater flexibility. The rule now requires Wyman's to apply pesticides adjacent to the subject water bodies in a manner consistent with a pest management plan approved by the Board. The rule does not require that the plan be approved annually, but rather "on a periodic basis."

David Yarborough, Extension Blueberry Specialist, questioned the need to annually update the plan, especially in light of the fact that the fish hatchery has not operated in several years. Board members agreed there was little need to review the plan annually, especially if there are no substantive changes.

Simonds/Jemison: Moved and seconded approval of the plan until such time as substantive changes are made.

In Favor: Unanimous

4. Presentation by Robert Moosmann of the Maine Department of Transportation on Possible Options for Weed/Brush Control Adjacent to Guardrails

In recent years, the Maine Department of Transportation (MDOT) has faced challenges arising from growth of vegetation adjacent to guardrails. Vegetation traps road sand and debris, resulting in blocked drainage. Robert Moosmann of MDOT will review various weed management options being considered at MDOT and seek Board input.

Presentation By: Robert Moosmann  
Vegetation Control Manager

Action Needed: Provide Input to MDOT

- ☒ Robert Moosmann of MDOT first went through a PowerPoint presentation showing MDOT's guardrail mowing program which uses a mower on an articulating arm attached to a front-end loader. He stated guardrails pose challenges for MDOT because they are usually near water and have a steep embankment, making hand maintenance risky. At the same time, control of woody brush and certain weeds is important to maintain drainage and visibility. Moosmann then ran a video clip advertising the "wet blade" technology—a mowing system that also applies herbicides

to the cut surfaces of plants. Herbicides are dispensed using centrifugal force along a groove in the bottom of the blade and held in place using lift from a small wing at the end of the blade. The technology results in more uniform weed control with lower herbicide use.

Moosmann discussed the risks associated with using hand labor to control brush and weeds adjacent to guardrails and the cost comparisons for different control methods. He reported that there are two other areas where MDOT wants to try the wet blade technology: to control invasive species and to control brush/weeds in other buffered areas. Moosmann stated the goal is to continue the overall reduction of herbicide use. He alerted members that MDOT may request a variance that allows a ten-foot setback to water if they decide to adapt the wet blade technology.

5. Workshop Session to Continue Reviewing Housekeeping Amendments to Chapters 10, 20, 21, 27, 28, 31, 40 and 41

A public hearing was held on November 17, 2006 on a series of minor housekeeping amendments to eight different rule chapters. Four people testified at the public hearing and 13 written comments were received prior to the December 1, 2006 deadline. The Board initially reviewed the rulemaking record at their December 15, 2006 meeting and asked the staff to make minor revisions to a couple of the proposed amendments based on the rulemaking record. Members will continue the process of reviewing the revised language.

Presentation By: Henry Jennings  
Acting Director

Action Needed: Determine final regulatory language for approval at the next meeting

- ☒ Jennings directed Board members to revised language in Chapter 20 relating to “verifiable authorization.” The new language would allow pest control companies more flexibility in the approach they use to ensure that customers authorize ongoing service and are aware of the service they agree to. Jennings also pointed out that the proposed language in Chapter 31 had been adjusted to maintain the Ag Plant Limited Blueberry category.

Members reviewed the revised language in Chapter 20. There was consensus that the language reflected their position and that the staff should move forward with adopting final amendments at the next meeting.

6. Discussion of Possible Rulemaking Effort to Exempt Certain Pond Dyes From Some Restrictions in Chapter 41

In May of 2003, the Board adopted Section 4 of Chapter 41 that placed restrictions on the sale of aquatic herbicides listed by the Board. This section was amended in 2004 so that the list only included herbicides (and algaecides) registered in Maine that contained label directions for aquatic uses. Since the rule was implemented, private pond owners have been left with essentially no options for controlling nuisance algal growth. The staff has held discussions with personnel involved with discharge permitting at the Maine Department of Environmental Protection (DEP). They do not object to the use of food-grade pond dyes in certain private ponds as long as they are carefully managed to minimize the chances that they will impact state waters. The Board will

review a draft staff proposal that would allow registered pond dyes to be purchased by unlicensed applicators.

Presentations By: Henry Jennings  
Acting Director

Action Needed: Determine whether it is appropriate to proceed with rulemaking

- ☒ Jennings reported that restrictions placed on the purchase and use of aquatic herbicides in 2004 had left private pond owners with only one option to control nuisance algae: contracting with a commercial applicator. Many pond owners found this option to be cost-prohibitive. Discussions with DEP personnel led to a proposal to exempt certain food-grade pond dyes from the applicator licensing requirements when the products are used in private ponds in accordance with Best Management Practices.

Members discussed the draft regulatory language and whether other dye-based algicides may hit the market that would require a future amendment to accommodate them. The staff believed this possibility was unlikely, since only certain dyes are effective at reflecting the wave lengths of light that promote algal growth. Consensus was reached to move forward with rulemaking on the proposed exemption.

7. Discussion of Possible Rulemaking Proposal to Reclassify Trichlorfon from State Limited Use to State Restricted Use

At the July 21, 2006 Board Meeting, members heard a request from the lawn care industry to reclassify trichlorfon from Limited to Restricted Use. Consequently, the Board directed the staff to include the proposal in the next round of rulemaking. A public hearing was held on November 17, 2006. No one testified about trichlorfon at the hearing; however, four people sent written comments supporting the proposed change, while one person submitted comments in opposition. The Board reviewed the rulemaking record at their December 15, 2006 meeting where a straw poll showed the proposal, as currently written, did not have sufficient support to be adopted. However, there was some indication that a revised proposal that included additional precautions to minimize the potential for exposure may get more support. As a result, the Board will review a revised proposal that includes risk minimization precautions.

Presentation By: Gary Fish  
Certification & Licensing Specialist

Action Needed: Determine whether it is appropriate to proceed with rulemaking

- ☒ Fish directed members to a new rulemaking initiative for trichlorfon that would implement the Board's position arising from the ongoing rulemaking process. The Board's position was too divergent from the ongoing rulemaking language and was not adequately supported by comments. Consequently, a new rulemaking initiative is necessary.

Members reviewed the new language and discussed the management practices. There was agreement that the proposed requirements would likely limit the extent to which trichlorfon would be used on turf; however, members felt risk-reduction measures were warranted and wide-scale use was not a desirable outcome.

Simonds/Stevenson: Moved and seconded that both new initiatives contained in Chapters 40 and 41 should proceed to rulemaking.

In Favor: Unanimous

8. Election of Officers

The Board's statute requires an annual election of officers. The members will choose a chair and vice-chair to serve for the coming year.

Presentation By: Henry Jennings  
Acting Director

Action Needed: Nominations and election of officers

- ☒ Jennings pointed out the Board's statute requires an annual election of officers that has been conducted in January in recent years. Randlett advised members they could either make a motion to nominate officers and then vote on the motion, or they could reach consensus to continue with the current slate of officers. After polling Eckert and Humphreys about their willingness to continue as chair and vice-chair, respectively, consensus was reached to continue as in the previous year.

9. Discussion Concerning Potential Development of an Indoor Notification Registry

At its July 21, 2006 meeting, the Board reviewed a list of potential discretionary tasks that had been prioritized through a voting process. Development of an indoor notification registry was ranked as its sixth priority. The staff will lead a discussion seeking to determine whether there is consensus to move forward with this task and, if so, what the basic tenets might be.

Presentation By: Henry Jennings  
Acting Director

Action Needed: Determine whether it is appropriate to proceed with rulemaking

- ☒ Jennings informed members that a bill is pending in the legislature that will preempt the Board's authority relative to notification for indoor pesticide applications. Accordingly, he recommended that the Board postpone consideration of an indoor registry until the outcome of the pending bill is determined.

Humphreys/Stevenson: Moved and seconded to table the matter.

In Favor: Unanimous

10. Discussion Concerning Potential Development of Buffer Zones to Protect Surface Water

At the July 21, 2006 Board Meeting, members reviewed their prioritization balloting for discretionary tasks discussed at their 2006 planning session in June. Development of buffer zones to protect water quality ranked as the Board's number four priority. The staff has summarized surface water data and researched other state requirements for buffer zones. They will now present their findings and preliminary concepts for a possible rulemaking effort.

Presentation by: Henry Jennings  
Acting Director

Action Needed: Determine whether it is appropriate to proceed with rulemaking

- ☒ Jennings stated that consideration of buffer zones to water was ranked as the Board's number four priority arising from their 2006 planning session. For this purpose, Jackson developed an in-depth memo that contained the US Geological Survey's National Water Quality Assessment for pesticides in ground and surface water. In addition, the memo summarized Maine data relative to surface water sampling for pesticides. Finally, preliminary draft rule language was presented for the purpose of discussion.

Board members discussed numerous instances where mandatory buffers to waters of the state would be impractical, such as mosquito spraying, forest insect spraying and right-of-way spraying. Simonds questioned whether it might be possible to develop flexible buffers based on risk. This idea appeared too ambitious. Members felt it would be easier to work out conflicts through a case-by-case permit system.

Concern was expressed over the breadth of DEP's definition of state waters, which could result in unintended consequences. Consensus was reached to direct the staff to invite a representative from DEP to the next Board meeting to discuss DEP's definitions.

11. Other Old or New Business

- a. Announcement that Heather Jackson, staff Water Quality Specialist, has accepted a job at DEP

- ☒ Jennings reported that Jackson had accepted a position with the Maine Department of Environmental Protection. Members asked what the plans were for filling the vacancy. Current thinking is that it is best not to refill the position that is attached to the federal account. Funding has become increasingly tight on the federal account, leading to the prospect that the Board may be forced to layoff an employee in the near future. The Board also needs to address a pay inequity issue with its pesticide field inspectors.

- b. Legislative Update

LD 1798 An Act To Provide for Public Notification of Indoor Pesticide Applications

- ☒ Jennings stated this bill is one promoted by the New England and National pest management associations, intended to address concerns expressed by structural pest management companies about recent and future indoor notification requirements.

LD 329 An Act To Prohibit the Use of Deltamethrin or “DECA”

- ☒ The staff was unsure of the motivation for this bill presented by Representative Faircloth. Board members agreed it was poor policy to regulate individual active ingredients without a comparative risk analysis.

LD 728 An Act to Require a Commercial Pesticide Applicator’s License in Food-handling Establishments

- ☒ This is the bill that the Board requested that was submitted through the Department of Agriculture.

LD 955 An Act To Prohibit Aerial Spraying of Pesticides Near Buildings, Roads and Bodies of Water

- ☒ Representative Schatz of Blue Hill presented this bill. Schatz relayed two complaints to the Board’s office during the summer involving aerial applications adjacent to public roads.

c. Other ?

- ☒ Fish alerted members to a brief memo contained in their meeting folder which sought the Board’s position on whether dormitory rooms should be considered rented residential units pursuant to Chapter 26. Board members agreed with Assistant Attorney General Randlett’s analysis of the issue in which he concluded dorm rooms fit the definition.
- ☒ Jennings asked that members reconsider two votes from the November 17, 2006 Board Meeting in which questions arose as to whether a proper quorum existed. The Board considered approval of the October 13, 2006 meeting minutes.

Jemison/Stevenson: Moved and seconded approval of the October 13, 2006 Board meeting minutes

In Favor: Unanimous

The Board then considered the memo from the October 13, 2006 meeting which proposed that bedbugs be designated as public health pests for the purposes of Chapter 26.

Jemison/Humphreys: Moved and seconded approval of bedbugs as public health pests.

In Favor: Unanimous

- ☒ Jennings alerted members that Deputy Commissioner Porter had inquired about their willingness to compromise over the bill in the legislature intended to address the concerns of structural pest control companies. Members felt they would need far more specific information to consider any compromise. A discussion ensued on the issues of concern to structural applicators.

12. Schedule and Location of Future Meetings

February 16, 2007 in Waterville, March 16, 2007 and April 13, 2007 are the tentative dates for the next Board meetings.

Adjustments and/or Additional Dates?

- ☒ Board members reserved May 18, 2007 as a future meeting date.

13. Adjourn

- ☒ Jemison/Humphreys: Moved and seconded that the meeting adjourn at 1:30 p.m.

In Favor:        Unanimous